

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9851 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UMESH ALIAS SHIVO ALIAS ZADIYOJAYANTILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

MS AMIBEN YAGNIK, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/01/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu-Umesh alias Shivo alias Zadiyo Jayantilal Patel has brought under challenge the detention order dated 26/6/1996 rendered by the 2nd respondent u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

2. The petitioner was served with the grounds of detention alongwith the copies of the documents. It is alleged that the petitioner was booked by the police in two offences one being CR No. 176/96 of Naranpura Police Station for the offences punishable under sec. 394 of the Indian Penal Code and another being CR No. 120/96 of the Vatva Police Station for the offences punishable u/Ss. 120B, 347, 394, 365 and 386 of the Indian Penal Code. It is stated in the grounds of detention that if the petitioner was released on bail at any point of time, he might continue to indulge in criminal and anti-social activities.

3. Rule was issued in this petition on 9/12/1996 and was made returnable within 3 weeks. However, no reply to the petition has been filed by the respondent.

4. It is contended by the learned advocate for the petitioner that simply because certain criminal cases have been registered against the petitioner, he cannot be branded as a "dangerous person" within the meaning of section 2(c) of the PASA Act. The learned advocate relies on a decision of the Apex Court in *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police & Ors.* reported in 1995 (3) SCC 237. This petition is being opposed by Ms. Amiben Yagnik, learned AGP. She submits that there are serious allegations against the petitioner which is evident from the facts of the two criminal cases registered against the petitioner. She, however, fairly concede that in a petition by a co-accused in respect of the same cases, this Court had an occasion to release the concerned petitioner in Special Civil Application No. 5973/1996 decided on 4/11/1996 (Coram : N.N. Mathur, J.).

5. I have considered the rival contentions of the parties and have also gone through the relevant materials on record with the assistance of the learned advocates. Simply because some stray cases have been registered under the IPC, it cannot be said that the activities of the detenu in any manner is prejudicial to the maintenance of public order. In view of this, the petitioner cannot be branded to be "dangerous person" to order to attract provisions of the PASA Act for his detention. Thus, in my view, the detention of the petitioner is illegal.

6. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Umesh alias Shivo alias Zadiyo Jayantilal Patel shall be forthwith set at

liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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